



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Date : 06.09.2021

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP (MD)No.11707 of 2021

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SURESH

... PETITIONER/ACCUSED NO.3

VS

STATE REPRESENTED BY
THE INSPECTOR OF POLICE,
THIRUVEGAMPUTHUR POLICE STATION,
SIVAGANGAI DISTRICT.
[CRIME NO.162 OF 2021]

... RESPONDENT/COMPLAINANT

FOR PETITIONER : MR.T.VEERAKUMAR, ADVOCATE,

FOR RESPONDENT : MR.P.KOTTAICHAMY,

GOVERNMENT ADVOCATE (CRL.SIDE)

PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

PRAYER :-

For Anticipatory bail in Crime No.162 of 2021 on the file of the Respondent police.

ORDER : The Court made the following order :

The petitioner, who apprehends arrest at the hands of the respondent police for the alleged offence punishable under Sections 279, 336, 353 and 379 IPC r/w Section 21(4) of the Mines and Minerals (Development and Regulation) Act, 1957 in Crime No.162 of 2021, seeks anticipatory bail.

2.The case of the prosecution is that the petitioner along with other accused involved in illegal transportation of sand in a lorry and based on a WhatsApp video, the present case came to be registered.

3.The learned counsel for the petitioner submits that the petitioner is an innocent and he has been falsely implicated in this case after a period of twenty days from the alleged occurrence based on a WhatsApp video.

4.The learned Government Advocate (Crl.side) appearing for the respondent police submitted that the petitioner has transported river sand in a lorry and based on the complaint lodged by the defacto complainant, case has been registered. The petitioner has not involved in any other case.

5.The respondent has filed a status report on 06.09.2021, wherein it has been stated as follows:

<https://hcservices.ecourts.gov.in/hcservices/>



"5.It is respectfully submitted that after investigation it reveals that one Vijay, who is A1 and Prabhu, who is A2 both are relatives and A1 asked A2 to come along with him in a car bearing registration No.TN 63 1212 for unloading the illegal sand, which is coming in a lorry bearing registration No.TN 69 AA 2399 (but at the time of the occurrence the number plate was removed)

6.It is respectfully submitted that while the lorry was parked at Sarugani to unload the sand police official came there in a two-wheeler by seeing them, the driver of the lorry who is the petitioner herein started the vehicle and drove it rashly. When the police official followed the vehicle, a car was crossed, which is driven by A1 along with a2 and did not give he way to any vehicle because of that lorry fled away from the spot and police official could not catch them and also identify the accused persons.

7.It is respectfully submitted that all the above incidents videographed by one public and he released in the internet and after 20 days of incidents, it was seen by the defacto complainant through WhatsApp and in that video, car number was identified and he gave a complaint by stating above incidents."

6.Considering the facts and circumstances of the case, non-registration of case by the respondent police nearly for twenty days, the antecedent of the petitioner and the status report filed by the respondent being not satisfactory, this Court is inclined to grant anticipatory bail to the petitioner.

7.Accordingly, this petition is allowed. The petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate, Devakottai on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Devakottai and on further conditions that:

[a]the petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhaar card or bank pass book to ensure their identity.

[b]the petitioner shall report before the respondent police daily at 10.30 am., until further orders.



[c]the petitioner shall not tamper with the evidence or witness either during investigation or trial.

[d]the petitioner shall not abscond either during investigation or trial.

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[e]On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner is released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**.

[f]If the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

8.It is needless to say that any tool or instrument or vehicle used for illegal quarrying/ transportation of sand is liable to be seized under Section 21(4) of the Mines and Minerals(Development & Regulation) Act, 1957 and any vehicle or instrument or tool which has been seized under Section 21 (4) of the Mines and Minerals (Development & Regulation) Act, 1957, is liable to be confiscated under Section 21(4-A) of the Act.

9.Though the above provision mandates the authorities to confiscate the tool or instrument or vehicle involved in the commission of the offence of illegal quarrying / transportation of sand, the authorities have not invoked the provision of 21 (4-A) of the Mines and Minerals(Development & Regulation) Act, 1957 and therefore, a Division Bench of this Court in W.P.No.19936 of 2016, etc., batch has emphasised the need for confiscation of the vehicles. Consequently, the Government has also issued certain directions to the authorities of Revenue, Police and Forest and Geology and Mining departments to seize the vehicles and for confiscation of the same in G.O.Ms.No.170, Industries (MMC-2) Department, dated 05.08.2020. Therefore, the respondent police is directed to proceed further as per Section 21 (4-A) of the Mines and Minerals(Development & Regulation) Act, 1957 and as per the guidelines issued in G.O.Ms.No.170, Industries (MMC-2) Department, dated 05.08.2020.

sd/-
06/09/2021

/ TRUE COPY /

/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

- 1.THE JUDICIAL MAGISTRATE,
DEVAKOTTAI.
- 2.DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
SIVAGANGAI DISTRICT.
- 3.THE INSPECTOR OF POLICE,
THIRUVEGAMPUTHUR POLICE STATION,
SIVAGANGAI DISTRICT.
- 4.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL OP(MD) No.11707 of 2021
Date :06/09/2021

GC/SKN/SAR-III (09.09.2021) 4P 5C